(1)

90-1534

No. _____

Supreme Court, U.S.
FILED
APR 4 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

GIL HOLLINGSWORTH,

Petitioner,

v.

THE STATE OF TEXAS,
GARRY MAURO, IN HIS CAPACITIES AS
COMMISSIONER OF THE GENERAL LAND OFFICE
AND CHAIRMAN OF THE BOARD FOR LEASE OF
UNIVERSITY LANDS, AND THE BOARD FOR
LEASE OF UNIVERSITY LANDS,

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Gil Hollingsworth,
Pro Se

P. O. Box 10592
Midland, Texas 79702
915-699-0511

QUESTIONS PRESENTED

1. Can the STATE OF TEXAS and it's administrative agencies ignore statutes promulgated and adopted by it's own legislature manadating administrative procedures to govern the conduct of state agencies in their dealings with the citizens of the State and United States.

2. Can a party to a lawsuit get a fair and impartial hearing when the opposing party makes an ex parte communication with the court by a letter making accusations which were not included in the trial record and not giving the first party an opportunity to respond to the letter before the court ruled.

LIST OF PARTIES

1. Gil Hollingsworth, a resident of Midland, Texas is the petitioner in this case.

Petitioner was a defendant in the trial court under the allegations of a petition filed against him by GARRY MAURO, COMMISSIONER OF THE GENERAL LAND OFFICE OF THE STATE OF TEXAS.

2. Petitioner Gil Hollingsworth is acting as his own counsel Pro Se.

3. Respondents consist of THE STATE OF TEXAS, GARRY MAURO, in his capacities as Commissioner of the General Land Office and Chairman of the Board for Lease of University lands, and the Board for Lease of University Lands.

4. Respondents are represented by the Attorney General of Texas, Dan Morales, and assistant Attorney General, Jose Manuel Rangel.

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No. _____

IN THE
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v.

THE STATE OF TEXAS,
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COMMISSIONER OF THE GENERAL LAND OFFICE
AND CHAIRMAN OF THE BOARD FOR LEASE OF
UNIVERSITY LANDS, AND THE BOARD FOR
LEASE OF UNIVERSITY LANDS,

Respondents,

PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF TEXAS

Petitioner Gil Hollingsworth, respectfully urges that this Honorable Court grant this Petition for WRIT OF CERTIORARI, seeking review of a denial of an application for WRIT OF ERROR OF THE SUPREME COURT OF TEXAS filed December 5, 1990, for which petitioner

Gil Hollingsworth's motion for rehearing of the APPLICATION for WRIT OF ERROR was overruled January 9, 1991.

OPINIONS BELOW

The Order of the Supreme Court of Texas dated December 5, 1990, Case No. C-9715 denying petitioner's Application for Writ of Error, appears as Appendix A. The subsequent order of the Supreme Court of Texas Dated January 9, 1991, denying petitioner's motion for rehearing of the Application for Writ of Error, appears as Appendix B. The opinion in the COURT OF APPEALS FOR THE THIRD SUPREME JUDICIAL DISTRICT AUSTIN, TEXAS; dated December 6, 1989, STATE, ET AL VS. GIL HOLLINGSWORTH, ET AL, No. 3-89-066-CV, and reported in 784 S.W.2d. 461. Appears as Appendix C. (Petitioner's motion for rehearing was overruled on February 28, 1990.)

The judgment of the District Court of Travis County, Texas, 201st Judicial District No. 344,540-A filed December 13, 1988, appears as Appendix D.

JURISDICTION

The denial of the Application for Writ of Error in the Supreme Court of Texas, Appendix A, was entered on December 5, 1990. Petitioner's motion for rehearing of Application for Writ of Error, Appendix B, was overruled on January 9, 1991. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The fifth amendment, United States Constitution, which provides: "No person shall ... be deprived of life, liberty, or property, without due process of law."

2. The fourteenth amendment, Section 1, United States Constitution, which provides: No state shall ... enforce any law which shall abridge the privileges or immunities of Citizens of the United States: nor shall any State deprive any person of life, liberty, or property, without due process of law.

3. Article 1 § 19 Constitution of the State of Texas, which provides:

No citizen of this state shall be deprived of life, liberty, property, privileges, or immunities, or in any manner disfranchised, except by the due course of the law of the land.

4. The Statute under which petitioner perfected property rights was Subchapter G of Chapter 52 of the Natural Resources Code, TEX. NAT. RES. CODE § 52.221 to § 52.252 which provided more specifically as follows:

§52.222 Application for Prospect and Development of Surveyed Land.

(a) A person who desires to obtain the right to prospect for and develop oil and gas on surveyed land shall file with the County Clerk of the County in which the tract or a portion of the tract is located or with the County Clerk of the County to which the County is attached for judicial purposes a written application which designates the land sufficiently to identify it.

(b) On receiving $1 as a filing fee, the County Clerk shall file and record the application and shall note the filing and recording together with the time of filing on his record of

surveys opposite the entry of the proper survey.

(c) The application shall be filed with the land office within 30 days after it is filed with the County Clerk"

§52.225 Filing Documents and Issuing Permits

(a) When the commissioner receives an application that was filed with the County Clerk or surveyor, the field notes and plat, a $1 filing fee plus 10 cents an acre for each acre for which application is made, and an affidavit made by the applicant indicating interests he has in any other permit, lease, or patent issued under this subchapter and in good standing, he shall file these

documents.

(b) If examination of the application and the field notes are found to be correct and the area for which application is made is covered by the provisions of this subchapter, the commissioner shall issue to the applicant or his assignee a permit conferring on him an exclusive right to prospect for and develop oil and gas within the designated area for a period of not more than two years.

5. §6252-13a Administrative Procedure and Texas Register Act.

Section 1. It is declared the public policy of this state to afford minimum standards of uniform practice and procedure for state agencies, to

provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

Section 13. (a) In a contested case, all parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days.

6. Code of Judicial Conduct Canon 3A(5) which provides:

A judge, except as authorized by law, shall not directly or indirectly initiate, permit, nor consider ex parte or other private communications concerning the merits of a pending or impending judicial proceeding.

7. Code of Judicial Conduct, Canon 8B which provides:

The following persons shall comply with all provisions of this Code:

(1) An active, full-time justice or judge of one of the following courts:

(a) the Supreme Court, ...

STATEMENT OF THE CASE

This is a statutory construction and administrative procedure case which concerns the validity and effect of applications for permits to prospect for and develop oil and gas on lands owned by the State of Texas. (Hereafter TR refers to Trial Record, SF refers to Statement of Facts, and Supp. SF refers to Supplemental Statement of Facts.)

The applications in question were filed by Petitioners Gil Hollingsworth and Bryce Evans in 1983 with the Land Commissioner of the State of Texas, Respondent Garry Mauro, pursuant to the provisions of Subchapter G of the Texas

Natural Resources Code, TEX.NAT.RES.CODE §§52.221 et seq., which was repealed by the Legislature shortly thereafter. The Land Commissioner refused to file the applications on the sole alleged ground that the provisions of Subchapter G were invalid statutes and accordingly did not obligate him to issue permits pursuant to their terms. The Land Commissioner wrote Petitioner a letter denying the permits. See Appendix G.

When Petitioners, along with a number of other permit applicants, refused to withdraw their applications, the Land Commissioner filed this declaratory judgment suit in Travis County on February 10, 1983. (TR3) Commissioner Mauro brought the suit against approximately 30 persons who had submitted applications with the General Land Office for permits to prospect for

oil and gas on various tracts of state land under the provisions of Subchapter G. He sought a declaratory judgment that Subchapter G was invalid and without force or effect even prior to its repeal, and that he was therefore not required to issue permits to the applicants, including Petitioner.

Two of the other applicants, Ray Allen and Jacqueline Allen, filed a plea of privilege, and the case against them was transferred to Midland County. It was tried and appealed and resulted in a judgment adverse to the Allens. See Allen v. Mauro, 733 S.W.2d 228 (Tex. App. -- El Paso 1986, writ ref'd n.r.e.).

The case filed by Respondent Mauro against the other applicants remained in Travis County, but all other Defendants except Petitioners Gil Hollingsworth and

Bryce Evans entered into agreed judgments of dismissal. Petitioners filed answers denying Commissioner Mauro's allegations, and also filed counterclaims seeking a declaratory judgment that Subchapter G was valid and effective prior to its repeal, and that the terms of the statute expressly created a mandatory duty on the part of the Commissioner to accept and file Petitioners' permit applications and to issue prospecting permits on the designated tracts of land. (TR 8, 11, 15, 18)

The case between Respondent Mauro and Petitioners Hollingsworth and Evans proceeded to a non-jury trial before Judge Hume Cofer on December 15, 1987. At the trial, Judge Cofer, on his own motion, raised for the first time a concern about whether the district court

might be without jurisdiction to hear the dispute because of the lack of pre-suit compliance, or any attempt by Commissioner Mauro to comply, with any of the provisions of the Administrative Procedure and Texas Register Act (APTRA), TEX.REV.CIV.STAT.ANN. art. 6252-13a. (SF 17-23)

Early in the trial of this case, and before Respondents had amended their pleadings post-trial in include the cloud-on-title claim, Judge Cofer on his own initiative accurately summed up the fundamental flaw in Respondents' case:

> How does it happen that before any decision by the Commissioner the court should be asked to intervene in the activities of the Commissioner? If the legislature has delegated to the Commissioner the responsibility to decide these

matters, how does it happen that it be in court before he decided it? (SF 18-19)

Respondent Mauro's counsel admitted at the trial of the present case that the General Land Office is an agency subject to the requirements of APTRA. (SF 18) That being so, Petitioners were entitled to a proper administrative hearing under APTRA.

Judge Cofer explicitly recognized that the Commissioner had failed to comply with either his statutory duty under Subchapter G or the procedural requirements of APTRA. The judge noted that the question of jurisdiction was the "threshold issue that stands out like a flashbulb," and that he did not have jurisdiction to give "advisory opinions" to Commissioner Mauro on matters committed to the Commissioner by

law. (SF 19-20)

Judge Cofer took the matter under advisement. (SF 79)

Months after the trial, on June 22, 1988, Commissioner Mauro filed the "Plaintiffs' Third Amended Original Petition," adding as Plaintiffs the State of Texas, the School Land Board, the Board for Lease of University Lands, and the Board for Lease of the Department of Corrections, and claiming for the first time that Petitioners' filing of their applications for permits to prospect on state lands in various county clerks' offices (as required by Subchapter G) created a cloud on the state's title to the lands in question. (TR 407)

Due process as guaranteed by the Constitution of the State of Texas and the United States was raised at the

trial court by petitioner's, DEFENDENT GIL HOLLINGSWORTH'S FIRST AMENDED ANSWER. Appendix F. Allegations of violation of due process were denied by the Trial Court. Appendix D.

Petitioners then filed additional pleadings alleging, inter alia: (1) that Commissioner Mauro had not complied with nor made a proper "final decision" under APTRA, and that the district court therefore lacked jurisdiction over the alleged declaratory judgment action; and (2) that Commissioner Mauro was estopped to deny Petitioners' applications for permits under Subchapter G. (TR 390, 403)

On December 13, 1988, Judge Cofer signed a final judgment, declaring that Petitioners' applications were "null and void," and that they were ordered "removed as a cloud on the title of any

of Plaintiffs' oil, gas and/or other minerals..." (TR 420)

Petitioners timely requested findings of fact and conclusions of law. (TR 416) None were timely filed, but finally, on May 19, 1989, Judge Cofer filed conclusions of law. (Supp. TR 2)

Petitioner Hollingsworth raised due process as guaranteed by the Constitution of the State of Texas and the United States as Point of Error No. 3 as recited in the Third Court of Appeals Opinion, Appendix C, page 14. Petitioner's allegations of violation of due process were denied by the Third Court of Appeals. Appendix C, page 33

On December 6, 1989, the Austin Court of Appeals affirmed the judgment for Commissioner Mauro and the State. Petitioners' motion for rehearing was overruled on February 28, 1990.

Appendix C. Petitioner timely filed an Application for Writ of Error with Supreme Court of Texas. Petitioner raised due process as guaranteed by the Constitution of the State of Texas and United States as Point of Error No. 2 in his Application for Writ of Error at the Supreme Court of Texas. Although represented by Counsel, on November 30, 1990, commissioner Mauro mailed a letter directly to the Supreme Court of Texas making accusations which were not in the Trial record urging the Court to Act. Appendix H. The Supreme Court of Texas denied petitioner's Application for Writ of Error on December 5, 1990. Petitioner was not allowed to respond to or answer the accusations prior to the Court's ruling. Appendix A. Allegations of violation of due process were denied by the Supreme Court.

Appendix A.

Petitioner filed a motion for rehearing of the Application for Writ of Error and motion to sever with the Court. The Supreme Court overruled the motion for rehearing of the Application for Writ of Error and the Motion to Sever on January 9, 1991. Appendix B.

On January 18, 1991 Commissioner Mauro wrote a letter to the Supreme Court absolving Petitioner of any wrong doing. Appendix I.

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

ARGUMENT I.

THE HOLDING BELOW IS INCONSISTENT WITH OTHER DECISIONS REGARDING DUE PROCESS OF LAW ACCEPTED BY THIS COURT

This Court accepted the reasoning of the Fifth Circuit in City of Dallas v. Southwest Airlines Company 371 F. Supp. 1015, affirmed 494 F.2d 773, rehearing

denied 496 F.2d 1407, Certiorari denied 95S.Ct 668, 419 U.S. 1079, 42 L.Ed.2d 674, rehearing denied 95S.Ct. 837, 420 U.S. 913, 42 L.Ed.2d 845, (1973) that where a party had never been accorded either notice or hearing with respect to agency orders application of orders by the agency to the party would be a violation of the Administrative Procedures Act, and the Fifth and Fourteenth Amendments to the United States Constitution.

This Court also accepted the reasoning of the Fifth Circuit in Arzanipour v. I.N.S., 866 F2d 743, rehearing denied Certiorari denied 110 S.Ct. 63 107 L.Ed.2d 30, (1989) that the failure of an agency to follow its own regulations is not, however, a per se denial of due process unless the regulation is required by the Constitution or

a Statute.

In the instant case a hearing is required by Statute, namely the Administrative Procedure and Texas Register Act § 6252-13a, Section 13.(a).

> Constitutional due process requires an administrative agency to accord a full and fair hearing on all disputed fact issues critical to the rights of the parties. Article 6252-13a, §13(a), Vernon's Tex.Civ.St.; Richardson v. City of Pasadena, 513 S.W.2d 1, 3 (Tex.Supp. 1974); Trimble v. Texas State Board of Registration for Professional Engineers, 357 S.W.2d 876 (Tex.Supp. 1965).

Texas Employment Commission v. Johnnie Dodd Automotive Enterprises, Inc., 551 S.W.2d 171, 174 (Tex.Civ.App. -- Waco 1977, writ ref'd n.r.e.). See also

Lewis v. Metropolitan Savings and Loan Ass'n, 550 S.W.2d 11 (Tex. 1977).

Commissioner Mauro's failure to provide Petitioner Hollingsworth the opportunity for a hearing before the General Land Office not only violated the Administrative Procedure and Texas Register Act, it also violated TEX.CONST.ART. 1, §19 and the fifth and fourteenth Amendments to the U.S. Constitution.

ARGUMENT II

THE BELOW COURT WAS TAINTED BY THE EX PARTE COMMUNICATION TO THE COURT BY COMMISSIONER MAURO'S NOVEMBER 30, 1990 LETTER TO THE SUPREME COURT WHICH RENDERED THE COURT UNABLE TO AFFORD PETITIONER A FAIR AND IMPARTIAL HEARING

Commissioner Mauro, who was represented by the Attorney General of the State of Texas, took it upon himself to contact the Supreme Court of Texas directly, making accusations which are

not contained in the trial record. See Appendix H.

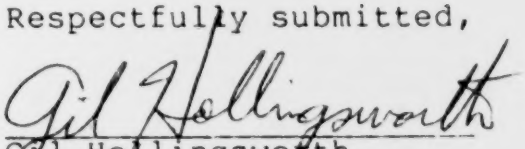
This action on his part is specifically prohibited by Canon 3A(5) of the Code of Judicial Conduct. Because of this contact with the Court, Petitioner was not afforded a fair and impartial hearing with the below Court as guaranteed by the Constitution of the United States. Petitioner was not afforded an opportunity to respond to the communication prior to the Court denying the application for Writ of Error on December 5, 1990.

Commissioner Mauro's ex parte communication poisoned the court and closed the door outside the rules of civil procedure and canons of judicial conduct.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be granted.

Respectfully submitted,



Gil Hollingsworth
Pro Se

P. O. Box 10592
Midland, Texas 79702

APPENDIX A

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

December 5, 1990

Mr. Broadus A. Spivey
Spivey, Grigg, Kelly & Knisely
P. O. Box 2011
111 West Sixth Street, Suite 300
Austin, Texas 78768-2011

Mr. Paul E. Kinsely
Spivey, Grigg, Kelly & Knisely
P. O. Box 2011
Austin, Texas 78768

Mr. Jose Manuel Rangel
Office of the Attorney General
Energy Division
P. O. Box 12548 Capitol Station
Austin, Texas 78711

RE: Case No. C-9715

Style: GIL HOLLINGSWORTH AND BRYCE E. EVANS v. GARRY MAURO, IN HIS CAPACITIES AS COMMISSIONER OF THE

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation, "Writ Denied."

Sincerely,

JOHN T. ADAMS, Clerk

by SIGNED

cc: Mr. Bryce E. Evans

APPENDIX B

THE SUPREME COURT OF TEXAS
P. O. Box 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

January 9, 1991

Mr. Broadus A. Spivey
Spivey, Grigg, Kelly & Knisely
P. O. Box 2011
111 West Sixth Street, Suite 300
Austin, Texas 78768-2011

Mr. Paul E. Kinsely
Spivey, Grigg, Kelly & Knisely
P. O. Box 2011
Austin, Texas 78768

Mr. Jose Manuel Rangel
Office of the Attorney General
Energy Division
P. O. Box 12548 Capitol Station
Austin, Texas 78711

Honorable Dan Morales
Attorney General of Texas
P. O. Box 12548
Austin, Texas 78711-2548

RE: Case No. C-9715

Style: GIL HOLLINGSWORTH AND BRYCE E. EVANS v. GARRY MAURO, IN HIS CAPACITIES AS COMMISSIONER OF THE

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for

rehearing of the application for writ in error in the above styled case. Petitioner's motion to sever is overruled.

Sincerely,

JOHN T. ADAMS, Clerk

by SIGNED

cc: Mr. Bryce E. Evans

APPENDIX C

IN THE COURT OF APPEALS, THIRD DISTRICT
OF TEXAS, AT AUSTIN

NO. 3-89-066-CV

STATE OF TEXAS, ET AL.,

APPELLANTS

vs.

GIL HOLLINGSWORTH, ET AL.,

APPELLEES

FROM THE DISTRICT COURT OF TRAVIS
COUNTY, 201ST JUDICIAL DISTRICT

No. 344,540-A, HONORABLE HUME COFER,
JUDGE

Gil Hollingsworth and Bryce E. Evans appeal from a trial-court judgment cancelling certain claims to real property recorded by them with the county clerks of various Texas counties, the judgment having been rendered in a suit to quiet title brought by several State authorities.[1] We will affirm the judgment.

THE CONTROVERSY

The controversy requires that we determine the proper construction and scope of Subchapter G of the Texas Natural Resources Code. Tex. Nat. Res. Code Ann. §§ 52.221 - 52.252 (1978). The Sixty-Eighth Legislature, repealed the subchapter, effective February 1, 1983, 1983 Tex. Gen. Laws, ch. 1, at 1, but the controversy arose from events immediately before that date.

IN THE COURT OF APPEALS, THIRD DISTRICT OF TEXAS, AT AUSTIN

JUDGMENT RENDERED DECEMBER 6, 1989

No. 3-89-066-CV

STATE OF TEXAS, ET AL. V. GIL HOLLINGSWORTH, ET AL. APPEAL FROM 201ST DISTRICT COURT OF TRAVIS COUNTY BEFORE

JUSTICES POWERS, CARROLL AND ABOUSSIE

AFFIRMED -- OPINION BY JUSTICE POWERS

THIS CAUSE came on to be heard on the transcript of the record of the court below, and the same being considered, because it is the opinion of this Court that there was no error in the trial court's judgment: IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court be and is hereby in all things affirmed. It is FURTHER ordered that Gil Hollingsworth and Bryce E. Evans, as principals, and Merchants Bonding Company-Mutual, as surety on the cost bond herein, pay all costs of this appeal; and that this decision be certified below for observance.

Subchapter G, administered by the Commission of the General Land Office, pertained generally to the issuance of

permits to prospect for oil and gas on certain real property in the public domain. One such permit gave the holder an exclusive right to prospect for State-owned oil and gas on "surveyed lands," and to obtain a lease for the development of such minerals if he found production in paying quantities.

Section 52.222 of Subchapter G authorized persons to select surveyed lands upon which they wished to prospect for oil and gas, and to file with the county clerk of the county in which a tract was located a written application for a permit, designating the tract sufficiently to identify it. The county clerk was directed to "file and record" the application on payment of a $1.00 fee; and within 30 days thereafter, the application was required to be filed in the General Land Office.[2]

Section 52.225(a) directed the Commissioner to file the application on receipt of (1) a $1.00 filing fee, (2) an affidavit indicating the applicant's interest in any other lease, patent, or permit issued under Chapter 52 of the Natural Resources Code, and (3) a sum of money calculated on the basis on 10 cents per acre for each acre included in the application. Section 52.225 (b) provided as follows:

> If examination of the application and field notes are found to be correct and the area for which application is made is covered by the provisions of this subchapter, the commissioner shall issue to the applicant or his assignee a permit conferring on him an exclusive right to prospect for and develop oil and gas within the designated area for a period of not more than two years.

(Emphasis added). Section 52.226 required an annual payment of 10 cents per acre, in addition, until oil in

paying quantities was obtained and the payment of royalty commenced. (See § 52.229). The mention of a royalty referred to the fact that § 52.231 gave the permit holder the right to a lease if he found and produced oil or gas in paying quantities, the lease to run for the period of such production. After the first year from the effective date of any lease, § 52.236 provided for the payment of two dollars per acre and a royalty of one-eighth on the value of the gross production of oil, and in the case of a gas well a royalty of one-tenth on the value of the meter output of all gas disposed of off the premises. The sums received by the Commissioner from such payments were directed by § 52.241 to the permanent funds of the public schools and asylums, or to the available fund or permanent fund of The

University of Texas.

Subchapter G originated in a statute enacted in 1913. 1913 Tex. Gen. Laws, ch. 173, at 409. A 1917 enactment, in substantially the same form, was compiled as article 5338 of the 1925 Revised Civil Statutes. 1917 Tex. Gen. Laws, ch. 83, at 158.[3]

Before the repeal of Subchapter G, Hollingsworth and Evans undertook to obtain prospecting permits from the Commissioner, as authorized by the Subchapter. They filed and recorded with the county clerks of various counties applications covering approximately 95,500 acres of land, embracing 70,000 acres dedicated to the Permanent University Fund, 15,800 dedicated to the Permanent School Fund, and 9,700 acres belonging to the Texas Department of Corrections. When they attempted to

file their application with the Commissioner, he returned them on the ground that Subchapter G was "invalid."

Thereafter the Commissioner and other affected public bodies sued Hollingsworth and Evans in district court. They prayed for judgment cancelling the applications, recorded in the counties where the lands in question were situated, "and removing the cloud on [the State's] title" which resulted from the "filing of such applications." Alternatively, they prayed for a declaratory judgment as follows: (1) Subchapter G did not apply to the lands in question; or (2) Subchapter G was "without force and effect"; or (3) Subchapter G did not apply to the lands in question until other public authorities had made the lands available for leasing under Subchapter G; or (4) the

Commissioner was not obliged to consider the applications "for any purpose" after the repeal of Subchapter G.

Hollingsworth and Evans counter-claimed for judgment compelling issuance of the permits on the grounds that they were entitled to them as a matter of law or that the Commissioner was estopped to refuse their issuance.

On undisputed and stipulated facts, and following a bench trial, the court below rendered judgment cancelling the recorded applications in the various counties, "as a cloud on the title" of the State, based on determinations that the applications were "null and void" and "of no force and effect." The judgment recites that all relief not granted "is expressly denied."

Hollingsworth and Evans appeal on six points of error: (1) the trial

court lacked subject-matter jurisdiction in the absence of a final decision by the Commissioner, from which a suit for judicial review might be filed by a "person aggrieved" as contemplated in the Administrative Procedure and Texas Register Act, Tex.Rev.Civ.Stat.Ann.art. 6252-13a, § 19(a) (Supp. 1989); (2) the trial court erred in exercising jurisdiction because essential issues were committed to the primary jurisdiction of the Commissioner, to be decided in a contested case under art. 6252-13a, § § 13 - 20; (3) the Commissioner's action in denying Hollingsworth and Evans a contested-case proceeding deprived them of due process of law, and the trial court erred as a matter of law in failing to hold as much; (4) the trial court erred in holding the applications invalid because Subchapter G was a valid

statute applicable to the lands in question, and Hollingsworth and Evans had complied with its terms under the evidence adduced; (5) the trial court erred in holding the applications null and void, respecting the lands of the Department of Corrections, because Subchapter G was a valid statute that encompassed those lands; and (6) the trial court erred in failing to hold the Commissioner estopped from refusing to issue the permits on a claim that Subchapter G was "invalid."

DISCUSSION AND HOLDINGS

The validity of each of the six points of error brought by Hollingsworth and Evans, and the soundness of their argument thereunder, depends ultimately upon a single issue: Did Subchapter G, before its repeal, apply to the lands in question, it being undisputed that

70,000 acres and 15,800 acres were dedicated to the university and public school funds, respectively, and that 9,700 acres belonged to the Department of Corrections? We conclude from our own study of the matter that the lands in question did not come within the scope of Subchapter G and its provisions for obtaining an exclusive right to prospect for oil and gas, followed by a lease subject to the specified royalties in the event oil or gas was found and produced in paying quantities.

By its terms, Subchapter G did not exclude any lands dedicated to the university and public school funds, or any belonging to the Department of Corrections. Indeed, § 52.241 implied that university and public school lands would be included within the scope of the subchapter. We believe, however,

that such lands were not included within the scope of Subchapter G when the present controversy arose. We think, in fact, there can be no doubt about the matter because legislative enactments after 1913 (the date of the first enactment of provisions that formed the basic framework of Subchapter G) evidence an unmistakable purpose to establish a different scheme for developing the oil and gas under such lands, administered in whole or in part by public authorities other than the Commissioner. These subsequent enactments are now found in Tex. Educ.Code Ann §§ 66.61 - 66.82 (1972 & Supp. 1989) (university lands), Tex. Nat. Res. Code Ann. §§ 32.001 - 32.157 (1978 & Supp. 1989) (public school lands), and Tex. Nat. Res. Code Ann. §§ 34.001 - 34.066 (1978 & Supp. 1979) (lands belonging to the Department of

Corrections). These statutes became effective before the present controversy arose, and establish a system whereby public bodies other than the Commissioner are empowered to select the lands to be leased and to choose the timing for development of the oil and gas, as opposed to such matters being determined by private persons under Subchapter G. See generally Whitworth, Leasing and Operating State-Owned Lands for Oil and Gas Development, 16 Tex. Tech L. Rev. 673, 677-679, 684-685, 685 (1985).

The system allows more favorable terms for the State, in the matter of royalties and other sums, than did Subchapter G before its repeal. The post-1913 legislation was enacted with the explicit purpose of taking university and public school land of the sta-

tutory provisions that became codified as Subchapter G, based on legislative determinations that these statutory provisions had worked to the serious disadvantage of the State. In the case of lands belonging to the Department of Corrections, it appears that the Legislature never intended them to come within the terms of the statutes later codified as Subchapter G; in any case, however, they were explicitly removed therefrom by an enactment which became effective well before the present controversy.

The permit system of Subchapter G is absolutely inconsistent with the competitive-bid system established in the subsequent legislation mentioned above. After university lands, public school lands, and lands belonging to the Department of Corrections were expli-

citly made the subject of competitive bidding, no later enactment ever placed such lands back within the scope of the statutes that became Subchapter G.

For all the foregoing reasons, we conclude the Commissioner lacked the power and authority to issue the permits for which Hollingsworth and Evans applied.

We should, of course, refer briefly to the legislative enactments upon which our conclusions are based. Each was enacted well after 1913 when the statutory provisions codified as Subchapter G were first enacted, and well after 1917 when they were altered to the form in which they existed in Subchapter G, but before the events in controversy here.

University Lands

In 1925, the Legislature enacted a statute authorizing the Commissioner to

solicit and accept competitive bids on university lands, the winner being entitled to drill for oil and gas and to obtain an "absolute lease" on production of oil or gas in paying quantities. The sums paid the State under such statute were directed to the Permanent University Fund. the statute extended for a period of five years "[a]ll oil and gas permits" theretofore "issued upon lands included" within the terms of the statute. (Emphasis added). 1925 Tex. Gen. Laws, ch. 71, § 14, at 229.4 The 1925 enactment impliedly repealed the 1917 enactment in its application to university lands. Id. at 225-229; see Theisen v. Robinson, 8 S.W.2d 647 (Tex. 1928).

In 1929, the Legislature repealed the 1925 statute, and withdrew entirely, from lease or sale, "all oil and gas in

University lands until such time as the Legislature may enact laws deemed adequate for the protection of University fund[s]..." 1929 Tex.Gen.Laws, ch. 2, at 6. The Commissioner was expressly directed not to consider applications filed for the purchase or lease of such oil and gas, and to return all applications together with all remittances submitted to him. Id.

Soon afterwards, the same Legislature enacted a statute creating the Board for Lease of University Lands, and assigned it certain duties. Among these were the duty to place on the market whole surveys, or divisions of surveys, selected by the Board from "University lands," for the purpose of soliciting bids for the purchase of oil and gas, the successful bidder being entitled to a lease on the terms set out

in the statute. The bids were required to specify a delay rental, a royalty, and any other sums the bidder wished to offer. Minimums were provided in the statute for delay rentals (10 cents per acre) and royalty (one-eighth for oil and gas), the Board being empowered to set higher minimums. Payment of funds under the leases was directed to the Permanent University Fund (the royalties) and the Available University Fund (delay rentals and all other sums apart from royalties). The enactment covered all unsold university lands and all minerals reserved under university lands that had been sold. 1929 Tex.Gen.Laws, ch. 282, at 616-21. The Legislature enacted the statute to be effective immediately, reciting as follows in §19:

> Since there is no law authorizing the sale of oil and gas leases on

University lands this fact creates an emergency....

Id. at 621. The declaration that "no law authoriz[ed] the sale of oil and gas leases on University lands" refers, of course, to that Legislature's previous withdrawal, from all lease or sale, "all oil and gas in university lands ... until such time as the Legislature may enact laws deemed adequate for the protection of University funds ...." The 1929 enactment is now codified, in substance, as Tex.Educ. Code Ann. §§ 66.61 - 66.82 (1972 & Supp. 1989).

We conclude that the Legislature in 1925 removed from the scope of the 1917 enactment (which became Subchapter G) the oil and gas under university lands. So much is implied in the provision for a competitive-bid system in the 1925 enactment, and its express provision for extending, for five years, the oil and

gas permits previously issued on university lands. In any event, the matter was placed beyond doubt by the 1929 enactment which explicitly withdrew from sale or lease "all oil and gas in University lands," until the effective date of the 1929 statute which created the Board of Lease of University Lands with a duty to administer a competitive-bid system. The emergency clause in that enactment made it clear that the Legislature understood that such lands were not included within the terms of any other existing statute, such as the 1917 enactment that had, by that time, been compiled as Tex. Rev. Civ. Stat. Ann. art. 5338 (1925) (and later codified as Subchapter G of the Natural Resources Code).

PUBLIC SCHOOL LANDS

In 1931, the Legislature enacted a

statute to regulate the sale and lease of lands set apart for the benefit of the public free school fund. 1931 Tex. Gen. Laws, ch. 271, §§ 8-11, at 454-55. Sections 8 through 11 pertained to the leasing of such lands for the production of oil and gas. They established a competitive-bid system administered by the Commissioner and set minimum prices per acre (one dollar) and royalty (one-eighth), the proceeds being directed to the available and permanent school funds. Section 13 of the Act provided: "Articles 5323, 5338, and 5374, Revised Civil Statutes, 1925, and all other laws or parts of laws in conflict herewith are hereby repealed." (Emphasis added). Article 5338 of the 1925 Revised Civil Statutes was, of course, the 1917 enactment which authorized prospecting permits on sur-

veyed lands. We need not digress on the effect of this apparently unqualified repeal of the provisions which became Subchapter G, for it was followed in 1939 by another statute as discussed below. It is sufficient for present purposes that the Legislature in 1931 obviously did not intend public school lands to be included within the fixed-price and fixed-royalty system eventually codified as Subchapter G.

In 1939, the Legislature withdrew from sale or lease all public free school lands "authorized by any law of this State to be sold or leased" until the expiration of 90 days from the date of the Legislature's adjournment. The withdrawal did not apply, however, "to applications to purchase or lease filed with the Commissioner ... prior to the effective date of [the] Act or to

applications" then involved in litigation. In addition, the enactment suspended all laws and parts of laws, in conflict with the enactment, for the same period of 90 days after adjournment. In an emergency clause, the Legislature declared "that existing laws do not provide adequate protection for the Permanent School Fund in the selling and leasing of lands set apart" for the fund. 1939 Tex. Gen. Laws, ch.1, §§ 1-4, at 463-64. The same Legislature subsequently enacted legislation establishing the School Land Board and directing it to administer a different system in order to supply adequate protection for the fund. It became effective 90 days after adjournment. The Board was given power to lease surveyed and unsurveyed lands set apart for the permanent free school fund, based on a

competitive-bid system, the Board being authorized to fix the dates for the sale and lease of surveyed lands and the prices for which surveyed and unsurveyed lands would be leased. The Board was given authority to reject any and all bids. 1939 Tex. Gen. Laws, ch. 3, §§ 2-8, at 473-78. These provisions became Tex. Rev. Civ. Stat. Ann. art. 5421c (1962) before their present codification as Tex. Nat. Res. Code Ann. §§ 32.001 - 32.157 (1978 & Supp. 1989).

Nothing we have found indicates that the Legislature ever intended, in any subsequent enactment, to place public free school lands once again within the provisions now found in Subchapter G. We therefore conclude that the Subchapter does not apply to such lands.

LANDS OF THE DEPARTMENT OF CORRECTIONS

In 1930, the Legislature enacted a

statute providing for the leasing of lands owned and held by the State as "prison lands." The enactment created the Board for Lease of Texas Prison Lands (now the Board for Lease of the Department of Corrections), and established a competitive bidding procedure administered by the Board with respect to the making of oil and gas leases on such lands. The statute specified the royalties and other sums payable in connection with such leases. The emergency clause declared the Legislature's view that there existed "no law authorizing the sale of oil and gas leases on Prison lands ...." 1930 Tex. Gen. Laws, ch. 13, at 16 (4th C.S., 41st Leg.). The enactment now exists as Tex. Nat. Res. Code Ann. §§ 34.001 - 34.066 (1978 &n Supp. 1979). We conclude therefore, that the Legislature

intended that the leases of such lands for oil and gas development be governed by the new statute and not the existing statutes which eventually became Subchapter G.

In summary, the lands in question might fall within Subchapter G owing to the all-encompassing scope of the terms "surveyed lands" and "unsurveyed lands" to which the Subchapter literally applies. It is equally plain, however, that the lands fall explicitly within the statutory provisions for competitive bids administered by the other public bodies mentioned above. The deciding issue is where the Legislature intended to place the lands. We think every applicable rule of statutory interpretation and construction points unequivocally to an intention to place the lands under Tex. Educ. Code Ann. §§ 66.61 -

66.82 (1972 & Supp. 1989) (university lands), Tex. Nat. Res. Code Ann. §§ 32.001 - 32.157 (1978 & Supp. 1989) (public school lands), and Tex. Nat. Res. Code Ann. §§ 34.001 - 34.066 (1978 & Supp. 1989) (lands belonging to the Department of Corrections) in lieu of Subchapter G. It is sufficient to mention only that the more specific statutes are a better guide to Legislative intention than the general provisions of Subchapter G. Sam Bassett Lumber Co. v. City of Houston, 198 S.W.2d 879, 881 (Tex. 1947); Code Construction Act, Tex. Gov't. Code Ann. § 311.026 (1988); see also Allen v. Mauro, 733 S.W.2d 228 (Tex. App. 1986, writ ref. n.r.e.). We hold, therefore, that the Commissioner had no authority to issue the permits under Subchapter G.

Hollingsworth and Evans attack the

trial court's jurisdiction to award the judgment rendered solely on the theory that the Commissioner had the authority that they claim he had. On the same theory, they claim estoppel, a denial of due process, and a legal right to the permits in question. We overrule their points of error and affirm the trial-court judgment.

John Powers, Justice

[Before Justices Powers, Carroll and Aboussie]

Affirmed

Filed: December 6, 1989

[Published]

FOOTNOTES

1 The appellees are Garry Mauro, Commissioner of the General Land Office, the State of Texas, the School Land Board, the Board for Lease of University Lands, and the Board for Lease of the Department of Corrections.

2 Section 52.224 of Subchapter G provided a similar procedure in the case of unsurveyed lands, the applicant being required to file his original application with the county surveyor, for whom he received field notes of the tract indicated in his application. The papers were required then to be filed with the General Land Office, evidently by the surveyor. We shall discuss only § 52.222, which governed surveyed lands, but our reasoning and holdings apply equally to § 52.224.

3 The mineral-permit procedure of subchapter G originated in a 1913 enactment of the Legislature. Section 1 of the act included within its terms [a]ll public school, University, asylum and the other public lands, fresh water lakes, islands, bays, marshes, reefs, and salt water lakes ...." Persons wishing to prospect on "any of the surveyed lands" were required to file with the county clerk an application designating the land he wished to prospect, and another application in the General Land Office within 30 days of his filing with the county clerk. Persons wishing to prospect on any of the specified submerged lands, or any "unsurveyed public land," were required to file a written application with the county surveyor, who was obliged to survey the tract and furnish the applicant the field notes and the original application. The papers were required then to be filed in the General Land Office.

> On payment of the required sums and the satisfaction of other conditions imposed in the Act, the Commissioner was required to issue a permit. 1913 Tex. Gen. Laws, ch. 173, at 409.
>
> In 1917, the foregoing statute was amended. Section 1 of the Act substituted 39 named substances in lieu of the general term "minerals" used in the 1913 enactment. The provisions relative to obtaining a permit to prospect for petroleum and natural gas remained basically the same, and new procedures were supplied for obtaining permits to prospect for "coal and lignite" and "other minerals." The public lands within the Act remained the same. 1917 Tex. Gen. Laws, ch. 83, at 158. The provisions relating to all minerals except oil, natural gas, coal, and lignite were later amended in 1919. 1919 Tex. Gen. Laws, ch. 79, at 241 (2d C.S., 36th Leg.). We need not refer to those amending provisions.

As a result of the foregoing enactments, the 1925 compilation of statutes provided in part as follows:

> Art. 5338. Permit. -- Subject to the terms hereof, permits for the development of oil and gas may be issued to any person, firm or corporation upon the following lands: All surveyed public school, University, asylum land and other public lands, fresh water lakes, river beds and channels, belonging to the State and

all of said lands, except public school and asylum lands sold or disposed of by the State or by its authority with a reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein. [Acts 1917, p. 158; Acts. 2d C.S. 1919, p. 241.]

Art. 5339. Application for surveyed lands. -- One desiring to obtain the right to prospect for and develop oil and natural gas that may be in any surveyed area included herein shall file with the county clerk a written application designating it sufficiently to identify it. ..... [Acts. 1917, p. 158.]

Art. 5340. Unsurveyed lands: application. -- One desiring to obtain the right to prospect for and develop oil and natural gas in any unsurveyed areas named in this law shall file with the county surveyor a written application .... [Id.]

Art. 5341. Issuance of permit. -- When the Commissioner receives an application that was filed with the county clerk or with the surveyor and the field notes and plat, ... [and related papers], he shall file the same, and if upon examination the application and field notes are found correct and the area applied for is within the provisions of this law, the Commissioner shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop

> petroleum and natural gas within the designated area for a term not to exceed two years. [Id.]

The 1925 compilation also included the terms of 1925 Tex. Gen. Laws, ch. 71, at 225, pertaining to university lands. The enactment, compiled as art. 5343, provided as follows:

> Art. 5343. University permits. -- The provisions of subdivision 3 of this Chapter [asylum and school lands that had been sold], so far as they relate to a combination of permits and extension of time for beginning development and time for development thereunder, shall apply to permits upon University land.

The compilation here includes the note: "[f]ollowing is additional legislation. Acts 1925, Chapter 71, p. 225. Article 5343 then continued:

> Section 1. That all university land now unsold and all of said land that has heretofore been sold with reservation of the minerals therein and that which may hereafter be sold with reservation of the minerals therein, whether known or unknown, shall be included in this Act and leases thereon conferring upon persons, firms and corporations the right to develop the oil and natural gas that may be in said land shall be subject to sale by the Commissioner of the General Land Office in accordance with the provisions of this Act and under such rules and regulations as may be

> adopted by said commissioner as may be necessary to the proper execution of its purposes; provided, oil and gas permits and leases outstanding, shall not be affected by this Act except as provided in Section 14 hereof.

(Emphasis added). Succeeding provisions tracked the 1925 enactment by providing for a sale price of ten cents per acre for the first year, twenty-five cents per acre for the second year, and fifty cents per acre for each year thereafter until producton in paying quantities is secured, not to exceed five years, coupled with a royalty of one-eighth of the oil produced and saved and one-eighth of the natural gas produced and sold off the lease, "and in addition thereto such sum of [sic] any, that one may pay therefor as provided herein." Section 4 provided for the safe-keeping applications to purchase and attendant bids; and "[w]hen an application shall have been filed and considered and the land found subject to lease, the lease shall be issued for a term not to exceed five years to the applicant that pays the most, in any sum, for the area in addition to the ten cents per acre and the stipulated royalty." (Emphasis added). All bids were rejected in the case of tie bids for the same property. We discuss in the text the effect of this 1925 amendment. Competitive bidding remained the basis for awarding leases on university lands until the present time, as indicated in the text.

The provisions of the 1925 compilation were carried forward to those of 1936

and 1948, thense into the National Resources Code.

4 See fn. 3

APPENDIX D

NO. 344,540-A

GARRY MAURO, COMMISSIONER
OF THE GENERAL LAND OFFICE
V.
BRYCE E. EVANS AND
GIL HOLLINGSWORTH

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

FINAL JUDGMENT

On the 15th day of December, 1987, came to be heard the above-entitled and numbered cause wherein the State of Texas, the School Land Board, the Board for Lease of University Lands, the Board for Lease of the Department of Corrections, along with Garry Mauro, in his capacity as Commissioner of the General Land Office of Texas, Chairman of the School Land Board, Chairman of the Board for Lease of University Lands,

and Chairman of the Board for Lease of the Department of Corrections, are Plaintiffs, and Bryce E. Evans and Gil Hollingsworth are Defendants.

Plaintiffs and Defendants, through their attorneys of record, announced ready for trial before the Court without the intervention of a jury, and the testimony, evidence, briefs and the arguments of counsel having been heard and duly considered, it was and is the opinion of the Court, and the Court finds that the law and the facts are with the Plaintiffs and against the Defendants.

It is ORDERED, ADJUDGED and DECREED that all applications to obtain oil and gas prospect permits filed by Defendants, Bryce E. Evans and Gil Hollingsworth, pursuant to Sections 52.221 through 52.252 of the Texas Natural Resources Code (Vernon 1978) in

any county within the State of Texas where any of said Defendants may have filed such applications, including but not limited to Brazoria, Calhoun, Culberson, Reeves, Andrews, Crane, Crockett, Ector, Pecos and Upton Counties, are null and void, and are hereby cancelled and discharged of record and determined to be of no force and effect, and such applications are hereby removed as a cloud on the title of any of Plaintiffs' oil, gas and/or other minerals located in any of those counties.

It is further ORDERED, ADJUDGED and DECREED that all declaratory judgment relief sought by Plaintiffs and Defendants through their respective actions for declaratory judgment, as well as all other relief not expressly granted hereinabove is expressly denied.

Costs of suit are hereby taxed jointly and severally against Defendants Bryce E. Evans and Gil Hollingsworth.

SIGNED on the 13th day of December, 1988.

SIGNED
HUME COFER

Presiding Judge

APPENDIX E

NO. 344,540-A

GARRY MAURO, COMMISSIONER
OF THE GENERAL LAND OFFICE
V.
BRYCE E. EVANS AND
GIL HOLLINGSWORTH

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
201ST JUDICIAL DISTRICT

CONCLUSIONS OF LAW

There were no District Court fact findings in this case, because all of the material facts were stipulated or undisputed. The Judgment is based on a conclusion that the applicable rules of law are correctly stated by Allen V. Mauro, 733 S.W.2d 228 (El Paso, 1986, writ ref. n.r.e.), as stated by the following District Court conclusions of law in the present case.

1. Sections 55.221 through 55.252,

Natural Resources Code, can and should be reconciled with Sections 66.61 through 66.80, Texas Education Code, concerning leasing Permanent University Fund lands; and with Sections 23.001 through 32.111 and Sections 52.001 through 52.153, Natural Resources Code, concerning leasing Permanent School Fund lands; and with Sections 34.001 through 34.185, Natural Resources Code, concerning leasing Texas Department of Corrections land.

2. The specific statutes concerning leases of the University, School, and Department of Corrections land involved in this case control over the general statutes relied on by the defendant applicants, and defendants are not entitled to leases under those general statutes.

3. By filing applications under

general statutes that do not apply to the lands involved in this case, defendants have created a cloud on the title to said public lands, and plaintiffs are entitled to a judgment removing that cloud.

4. A 1983 letter from the General Land Office asserting a different law contention did not estop plaintiffs from relying on the rules of law on which the above conclusions are based.

5. The District Court has jurisdiction to determine plaintiffs' action to clear the title to the lands in question.

6. The Court should not consider or decide the status of defendants' applications in the General Land Office, because that issue is moot if the Commissioner's 1983 action was a final order, and because, if the applications

are still pending in the General Land Office, a decision on that issue would be advisory, and the courts do not have jurisdiction to consider advisory decisions.

Signed this 19th day of May, 1989.

SIGNED
Judge Presiding

APPENDIX F

NO. 344,540-A

GARRY MAURO, COMMISSIONER

OF THE GENERAL LAND OFFICE

V.

BRYCE E. EVANS AND

GIL HOLLINGSWORTH

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

201ST JUDICIAL DISTRICT

DEFENDANT, GIL HOLLINGSWORTH'S FIRST AMENDED ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Gil Hollingsworth, who has been named as a Defendant in the above-styled cause, and in answer to the Plaintiff's Original Petition filed therein would respectfully show the Court as follows:

I.

Subject to such stipulations and admissions as have or may hereafter be

made, this Defendant asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and Defendant respectfully requests that Plaintiff be required to prove the charges and allegations against this Defendant by a preponderance of the evidence as is required by the Constitution and laws of the State of Texas.

II.

In the alternative, without limiting or waiving the above general denial, Defendant states that he properly and timely filed applications for permits to prospect for oil and gas on land of the Permanent School Fund and Permanent University Fund prior to repeal of Subchapter G., Permits and Leases, of Chapter 52, Section 52.221 et seq., of the Texas Natural Resources Code. Defendant took all necessary steps to

perfect his applications to prospect for oil and gas as required by the Code and filed his applications with Plaintiff herein. Without notice, hearing or decision in compliance with the Administrative Procedure and Texas Register Act, Plaintiff filed this cause of action.

III.

The acts and conduct of Plaintiff herein, his agents and employees, constitutes a clear violation of the Administrative Procedure and Texas Register Act and the due process clause of the Constitution of the State of Texas and United States.

IV.

As a result of the acts and conduct of Plaintiff, his agents and employees, this lawsuit has been on file for approximately five (5) years without the

above referenced permits being issued or a decision being made on them. Accordingly, Plaintiff should be estopped and prevented from asserting any authority over this matter and this Court should order the permits be issued to said Defendant.

WHEREFORE, the above Answer is respectfully submitted to the Court by Defendant who asks he be issued the oil and gas prospecting permits and such other and further relief, both general and special, at law and in equity, to which he is entitled to or the Court may deem proper.

Respectfully submitted,

TOM SAWYER
2209 Hopi Trail
Austin, TX 78703
512/477-7559

ATTORNEY FOR GIL HOLLINGSWORTH

By SIGNED
Tom Sawyer
State Bar No. 17694500

APPENDIX G

GARRY MAURO
Commissioner
General Land Office

February 3, 1983

Gill Hollingworth
4710-B Dentcrest
Midland, Texas 79703

Dear Mr. Hollingworth:

I have been informed that you have attempted to file Applications for Prospect and Development of Surveyed Land in Crane, Pecos, and Andrews County.

Your application will not be accepted for filing in the General Land Office because Subchapter G of the Natural Resources Code is invalid and of no force and effect.

In addition, I cannot condone your attempt to deprive the Permanent School Fund of desperately needed revenue used to support our system of public schools. I must uphold my oath of office by

rejecting your attempted filing and I will fight any attempt by you to resubmit an application and will institute the necessary legal action to prevent any trespass on state-owned land.

Sincerely,

SIGNED

Garry Mauro
Commissioner

GM/mhr

Enclosures

Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78701
(512) 475-2071

APPENDIX H

November 30, 1990

Mr. John T. Adams
Clerk, Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711-1224

Re: No. C-9715
Gil Hollingsworth and Bryce Evans v. Garry Mauro

Dear Mr. Adams:

The briefing on the application for writ of error has been completed on this case for seven months. However, I feel compelled to advise the Court on recent developments and the very real possibility of injury to a growing number of innocent investors. I would appreciate your bringing this letter to the attention of the Court.

This case grows out of a controversy which confronted me during my first month as Land Commissioner in 1983. Several individuals attempted to file prospect permits on hundreds of

thousands of acres of state land. Evans and Hollingsworth together attempted to file permits on 95,500 acres of state land, clouding title to 15,800 of Permanent School Fund land and 9,700 acres of Texas Department of Corrections lands. I refused to file those permits, believing the statute under which they were submitted to be invalid and to not authorize the giving away, below market value, of the state's minerals.

We have spent almost eight years clearing our title to this acreage. We prevailed in the El Paso Court of Appeals in 1986, and this Court refused the writ in Aller v. Mauro, 733 S.W.2d 288 (Tex. App. - El Paso 1986, writ ref'd n.r.e.), a related case involving almost identical facts to the one now before this Court. This cleared title to approximately 200,000 acres of state

land, freeing it to be leased under sealed bid procedures, leaving clouded the 95,500 acres itemized above.

We prevailed in the Austin Court of Appeals eleven months ago in this case. It has come to our attention that Mr. Evans has been selling interests in these purported permits for substantial sums to investors in Texas and as far away as Florida. My office has been contacted, almost always after the investment has been made, and the investors are shocked to learn that they have invested hundreds of thousands of dollars in permits which the Land Office and the courts of this state refuse to recognize as having any validity.

Mr. Evans is not, as best we can tell, fully disclosing the status of these permits and this litigation to many of

his investors. In fact, Mr. Evans' activities are being investigated by both the Texas Securities Board and the Travis County District Attorney.

Until the writ is acted on by the Court and this issue is put to rest, Mr. Evans will be given additional time to sell additional interests in these permits to innocent and uninformed investors. I cannot, in good conscience, stand by and wait without bringing these special circumstances and concerns to the Court's attention.

Sincerely,

SIGNED

Garry Mauro,
Texas Land Commissioner

GM:jps

cc: All Counsel of Record

APPENDIX I

January 18, 1991

Mr. John T. Adams
Clerk, Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711-1224

Re: No. C-9715
Gil Hollingsworth and Bryce Evans v. Garry Mauro

Dear Mr. Adams:

Although a final disposition has been made of this case, in light of the strong accusations of impropriety leveled against me by Petitioner Hollingsworth's counsel in their Motion to Sever and Motion for Rehearing, I feel compelled to respond. Please bring this letter to the attention of the Court.

First, let me apologize to this Court if I have offended any rule of procedure or diciplinary rule of professional conduct. My letter of November 30 was not intended as an attempt to improperly

influence or prejudice this Court on the merits of this case but rather to urge prompt action on a matter that had been pending for some time.

I believe I was obligated to bring these matters to the Court's attention by Texas Disciplinary Rule of Professional Conduct 3.03(a)(2) which directs a lawyer "to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act."

Additionally, I believe my communication to have been properly made under Texas Disciplinary Rule of Professional Conduct 3.05(b)(2) because I not only promptly sent Petitioner's counsel a copy of the writing but informed them the letter was going to be sent before it was delivered.

Although I believe it was clear in my

November 30 letter, I wish to reiterate that I have no evidence that in any way implicates Mr. Hollingsworth in any unlawful or questionable activity.

Although I have been ably represented by the Attorney General's Office in this matter, I find it hard to believe that prevents me as a constitutional officer of this state from communicating matters of public importance to members of the judiciary. I feel obligated to speak when the public interest demands it and will continue to do so unless instructed by this Court that my manner of so doing is improper.

Sincerely,

SIGNED

Garry Mauro,
Texas Land Commissioner

GM:SCK/ss

Enclosure

cc: All Counsel of Record